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J. Notopoulos
Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187843

DATE: February 23, 1977

MATTER OF: Building Maintenance Corporation - Reconsideration

DIGEST:

Prior decision holding that, because options are contingent in nature, bid bonds in sums sufficient to cover basic contract period, but not all option periods, are adequate in amount is affirmed. Contingent nature of options is not dependent on whether contractor has right of nonconcurrence with Government's exercise of option.

Building Maintenance Corporation (BMC) requests reconsideration of our decision B-187843, January 25, 1977, by which we denied its protest against any award for janitorial services to the low or second low bidder under Coast Guard invitation for bids (IFB) No. 7025, issued by the Seventh Coast Guard District, Florida.

The basis for the protest was that while the penal sums of the bid bonds furnished by those two bidders were sufficient to cover a 1-year period, they were inadequate for the 5-year period which could result from the exercise of renewal options provided for in the IFB. We held that it was clear that what was intended was not the award of a 5-year contract, but the award of a contract for a period expiring December 31, 1977, and that in fact the award would be made for a period ending September 30, 1977 in accordance with fiscal year appropriation limitations. In so holding, we pointed out that the exercise of the available options was merely "contingent."

The request for reconsideration is predicated on a statement in the decision that the option provision in the solicitation provided the Government with a right of election to extend the contract period "apparently subject to the contractor's right of nonconcurrence." Although this statement was based on the wording of the option clause in the IFB, the protester argues that the option clause does not give the contractor a right of nonconcurrence, and that therefore the option to extend is "unilateral," with the result that "the bid bond must be declared insufficient."

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Our holding was not predicated upon the bilateral or unilateral nature of the right to exercise the option. Rather, it was based upon the contingent nature of the option, which remains such even if it is not subject to contractor nonconcurrence. The option is regarded as contingent because it cannot be exercised unless (1) the agency has a continuing need for the services, (2) appropriations are available, and (3) it would be more advantageous to the Government to exercise the option instead of soliciting for bids. Although the protester points out that it is more likely than not that the option will be exercised, that in our view is not sufficient to convert the contingent nature of the option to something more definite.

Accordingly, we find no basis for modifying our prior decision, which is hereby affirmed.

Acting


Comptroller General
of the United States